EXTRATERRITORIAL PROJECT IN THE RESERVED DOMAIN OF A STATE

Financing of Removal Centers for Irregular Migrants by EU in Turkey

University of Oslo
Faculty of Law

Candidate number: 8023
Supervisor: Mads Andenæs
Deadline for submission: 12/01/2010

Number of words: 17,339

30.11.2010

Content

ACRONYMS

ECHR	European Convention on Human Rights
EctHR	European Court of Human Rights
EU	European Union
EC	Europan Community
ECJ	European Court of Justice
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
UNHCR	United Nations High Commissionary for Refugees
WGAD	Working Group on Arbitrary Detention (United Nations)

INTRODUCTION

The starting point of this thesis is the twinning project: "Support to Turkey's Capacity in Combating Illegal Migration and Establishment of Removal Centers for Illegal Migrants"[1]. The establishment of those removal centers is in major part financed by EU. They will "accommodate" irregular migrants[2] "pending procedures for readmission to their home countries".

The financing of extraterritorial projects by EU is common. In this case, nevertheless, the final purpose of the project is to deprive individuals of their liberty. This measure in the case of migration has a quite different dimension from deprivation of liberty in criminal cases. The concerned individuals are not criminal, the aim of the measure is not to punish but to remove the persons from the territory in which they entered or stayed illegally. But still, depriving one's of his or her liberty can have serious consequences, mainly when it does not meet international standards. Financing the facilities in which such deprivation of liberty takes place outside its territory cannot be neutral.

For this reason such project must not be disregarded and its meaning having regard to the state of international law and relations on the question of migration must be appraised. This

---

[1] IPA decentralized National Progammes, Project number: TR 07 02 16, Twinning no: TR 07 IB JH 05, standard summary project file available at http://ec.europa.eu/enlargement/candidate-countries/turkey/financial-assistance/index_en.htm see "Project Fiches 2007"

[2] Though the project refers to "illegal migrants", "irregular migrants" will be used to describe illegally staying

thesis will seek to assess how such project fits in the contemporary international legal framework.

Financing the creation of removal centers outside state's territory is the illustration of a consequent change in the way migration is dealt with and of the importance of the deprivation of liberty in the fight against illegal migration.

Migration policies have, indeed, known an important change in nature with EU being the main actor of it: the externalization. This evolution will be briefly addressed to understand how EU has come to this project in Turkey (chapter 1).

The states' practice worldwide shows that the deprivation of liberty is generally considered as the only way to achieve removal, as the risk of absconding under any other measure would be high. The project acknowledges itself that "in terms of implementing the readmission agreements removal centers can play an important role". So, the centers will be a tool in the process of removal

under readmission agreements. Apprehending the nature and the scope of the readmission agreements will allow us to understand that the perspective of removal, which is the final purpose of the deprivation of liberty in the centers, is not as guaranteed as the right of state to expel would let presuppose (chapter 2).

"Pending deportation procedures, illegal migrants will be controlled under better humanitarian conditions". Those removal centers aim at reaching the international standards threshold on detention of irregular migrants (chapter 3).

Having in mind all those elements, it will be easier to assess whether or not EU could be considered liable for any violation of rights in the removal centers it will have financed (chapter 4).

METHODOLOGY AND SOURCES

Normative sources will be used to draw the legal framework of the project. General International Law will be referred to in order to understand the place of migration in this subject matter. In addition, papers on the issue will be used to follow the trends and path it is nowadays following. Reports from international organizations will be as well useful to highlight the existing or potential violations of rights of migrants or to describe the migration challenges facing by Turkey. Finally, the two bodies which have developed important decisions on migration detention, and to which EU Member States and Turkey are parties, the HRC and the EctHR, will be key tools to underpin international standards on migration detention. As the project will be implementing EU "best practices" on detention, their legal framework will be adressed through EU Law, notably through the Council Directives.

CHAPTER 1 MIGRATION AND THE STATE OF INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

3.1 **Section 1** Migration, a transboundary issue in the reserved domain of states

It is a "matter of well established international law and subject to its territory obligations, [that] a state has the right to control entry of non nationals into its territory". This maxim has been reiterated in numerous judgments, opinions of monitoring bodies, states and by some international organizations.

This right is perceived as a consequence of the absolute authority of states over the elements constituting it: territory and population[3].

Territory is crucial both to the existence of the state and to the determination of the boundaries within which it can exercise its jurisdiction.[4] And boundaries separate the population which falls under this jurisdiction from those who do not, the aliens. Boundaries have been an obsession for centuries. It was the source of conflict between nations who were holding a territory as a part of their identity and a conflict between existing states and aspiring states for which statehood was conditional upon the control over a territory.

Dora Kostakopoulou has shown how from a conception closed to private property law of *nationalism*, aliens were excluded from the memberships of states: "Ownership and sovereignty over a land are conceptually linked. It is this link between political authority

[3] CHETAIL , 2007 p24

[4]CASSESE, 2005 p82

and collective ownership of the lands that explains why exclusiveness seems to be logically entailed by the concept of territorial sovereignty"[5].

It has been showed that the control of borders did not appear as a direct and simultaneous consequence of the territorial sovereignty of states[6]; from the beginning of the twentieth century it nevertheless led to consider migration as a "reserved domain" where states were not bound by international law[7]. However, it has been acknowledged that reserved domains are not fixed and are dependent on the evolution of international law[8]. It must be assessed to which extent international law influences and regulates migration issues nowadays.

First, the powers of states to refuse entry and expel are not absolute, states have to grant protection to asylum seekers falling under the conditions of the 1951 Refugee Convention and have to ensure some guarantees under human rights law to the expellees.

In addition, different international actors clearly consider the question of migration in a deeper way than in the past. At the end of the nineties, the issue started to be regularly on the UN agenda, the IOM projects and missions have increased and the Berne initiative in 2004 gave the opportunity to states to exchange on their different opinions and migration policies.

EU is often showed as an example of abandon of sovereignty over migration in its quest to a common asylum and migration policies. But this has happened through an important integration process of its member states - this evolution is not likely to occur at a global level - and if states are ready to sign inter states agreements, the only convention directly dealing with the treatment of migrants has know a disappointing success. The UN Convention on the Rights of all Migrant Workers and their Families has been ratified by forty four states and signed by fifteen others which are, for most, countries of origin or

[5] KOSTAKOPOULOU, 2004 p41

[6] Ibid 3, p24-25 Vattel clearly stated in the eighteenth century that people were free to move in Europe as long as they were not identified as enemies of the state

[7] BROWNLIE, 2008, p292

[8] Ibid

transit of migrants. The GCIM[9] has identified three reasons for this failure. First, some states regarding the quasi absence of migration do not feel concerned. Second, human rights instruments already guarantee fundamental rights for migrants. Finally, the question of sovereignty is raised to argue that the convention would hinder the ability of states to control movements of migrants[10]. It seems that states keep on refusing to enter into any binding treaty specifically dealing with the treatment of migrants. They are ready to sign agreements which are in their interests, dealing with the control of migration flows or the fight against illegal migration for instance. But, they consider human rights law as sufficiently encompassing the treatment of migrants; any further treaty specific to the issue is seen as an open door to further agreements on how states must regulate entry and stay of foreigners. Though initiatives have been taken to identify gaps in international law and the international instruments relevant to migration, the issue seems to be stuck in the perspective of a state to state relation.

The globalization has clearly played a role in the evolution of the nature and the perception of migration; nevertheless it seems that this evolution has not reached the point where states would agree to abandon a part of their sovereignty. This is probably because the control of entry and stay of aliens on the territory is still perceived as an element and a proof of states' authority, showing that they have controlled over the elements legitimating their existence, territory and population.

So, it is now acknowledged that some of the challenges migration triggers cannot be solved within the territory of each state but states still have full sovereignty in deciding who can entry and stay on their territories. Once they have set such rules the treatment of migrants must meet the requirements of human rights law. It is generally recognized that migration must be approached through existing Human Rights Law, as the international community does not seem to move towards a bill or right for Migrants for the reasons cited above[11].

---

[9] The Global Commission on International Migration was launched in 2003 and closed in 2005 by the UN Security Council. This commission was mandated to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration.

[10] Martin, 2005

[11] ALEINIKOFF, 2007, p 477-479

As previously held, EU has been working towards a common asylum and migration policy. It has as well become the leader in the development of the external dimension of migration policies by enhancing it relations and negotiations on this issue with third countries.

3.1 **Section 2** EU and the external dimension of migration

This part seeks to give an overview of the externalization process to have a full picture of the new dimension of EU migration policies in which the creation of the removal centers in Turkey is enshrined. Some issues directly linked to the removal centers are briefly cited here and will be further developed in the next chapter.

In 1999 at Tampere EU officially decided to extend the migration issue to its external policies, third countries would become "partners" in the fight against illegal migration and all the crimes linked to it[12].

The externalization takes place in three different manners. First, readmission agreements are a key instrument.
Through those agreements, which are bilateral or directly signed with the Union(it has the power to do so thanks to the Amsterdam treaty), third countries are committed to take back their own nationals and, provided always, third country nationals who have transited on their territories. It is worth noted that signing those agreements had been sometimes difficult as they are solely in the interest of the Community.

Second other agreements, signed to work on the root causes of migration by promoting development, are actually conditioned upon clauses on migration. Indeed, EU has been

[12] Tampere

working towards a policy including both the area of migration and development though the link between the two is still controversial[13].

Third, EU is externalizing its traditional instruments through financial and technical Support to third countries. This externalization is more or less strong according to the concerned countries. States wishing to become members of EU (Turkey for example) integrate EU laws and policies in their own ("policy transfer"). This integration is quite expensive and those countries have beneficiated from bilateral agreements and from the EU help (see for example the EU CARDS programme[14]). Some other countries, situated in North Africa or Eastern Europe, have also taken part in other programs of EU through the European Neighborhood Policy[15]. Actually, no region of origin of migrants has been forgotten. Even African Caribbean and Pacific states (ACP) through the Cotonou Agreement[16] are involved in the question of migration towards EU.

The policies on visa, the fight against human trafficking and smuggling and border control have as well an externalized character[17].

To come to all those externalizing agreements, EU has been negotiating in different manners according to the third countries in presence and the terms it wanted to obtain.

---

[13] Verhaeghe

[14] CARDS, 2000-2006

[15] REGULATION (EC) No 1638/2006, article 2(r)

[16] Cotonou Agreement, article 13 on migration and Eurostep's article on the difficult negotiation of this article

[17] FRONTEX, for instance, is a European agency specialized in border control. It is cooperating with third countries in the fight against illegal migration. See FRONTEX website.

3.1 **Section 3** From negotiating to interfering – the incentives used by EU in its negotiations with third countries

By looking at the different agreements with third countries, it can be drawn two patterns used by EU to obtain the consent and co-operation of those countries: positive and negative incentives[18].

Positive incentives usually take the form of agreements on visa facilitation. Their negotiations are often parallel to the signature of a readmission agreement. For the other state party to the agreement, choosing to sign is choosing to deal with the irregular migration "burden", often previously neglected, for the benefit of its travelling nationals.

EU has key tools to come to sign agreements on trade such as the access to the largest common market. But it does not have enough weight when it concerns the readmission of irregular migrants. It would seem that both EU and third countries take advantage in negotiating such agreements. But their cost must be assessed for both parties. EU engages to facilitate the procedure and the requirements for the granting of visa for a limited category of nationals of the third country[19]. It cannot afford to grant extensive visa facilitation, as this is a matter which usually falls within the domestic prerogatives of the member states. For their part, third countries will have to accept the readmission of their nationals and third country nationals who have transited through their territories, which as we will see further will entail an important investment in the receiving countries in their migration policies, administrations and relations with the countries of origin. Readmission agreements do not favor the other party to the agreement. For this reason, positive terms are sometimes held as "compensation"[20] to repair the loss of third states or simply to "pay" the service.

[18] Vocabulary used by ROIG, 2007 p 375

[19] for example the EU-Georgia Agreement on the Facilitation of the Issuance of Visa, 2010

[20] ROIG, 2007 p 376

The nature of negative incentives is much more ambiguous. Though the idea seems to have been given up by EU, on time to time some member states call the Union to use such tools in its negotiations with third countries. The obvious example of such incentives was first seen in the Presidency Conclusions of Seville in 2002. According to the conclusions when is identified an ”unjustified lack of cooperation in the joint management of migration flows […] the Council may […] adopt measures or positions under the common foreign and security policy and other EU policies, while honoring the Union's contractual commitments but not jeopardizing development cooperation objectives”[21].

In any case EU would breach its obligations under its agreements.

Nevertheless the absence of cooperation from the third country would lead to the readjustment of the EU allocations in the field of development for example. In addition “insufficient cooperation [would] hamper [the] establishment of closer relations”[22], the third country could lose opportunities of negotiations and further agreements in any other field.

Those negative incentives clearly not aim at “attracting” the consent of the states but to coerce it to fulfill its obligations of cooperation under an agreement or enter into one.

Some states such as the African, Caribbean and Pacific states (referred as ACP) would be vulnerable to such negative incentives, notably when their stability is dependent on EU development allocations. It could be argued in this case that EU would pressurize so much third countries through those incentives that they would not have any other choice than entering into co operation agreements and readjusting their migration policies to the EU will. It would “force a state something that is contrary to its will” [23] and consequently could amount to intervention.

[21]Presidency Conclusions 13463/02, 2002 para 36

[22] Ibid para 35

[23] SEMB, 1992

The principle of non intervention in the affairs of other states is "designed to ensure that each state respects the fundamental prerogatives of the other members of the community"[24]. It expresses the sovereign equality of states.

This principle is usually referred to in matters in which the jurisdiction of states is considered absolute as migration. Those matters are in the "reserved domain"[25].
But this principle is not absolute[26] and the borderline with the interstate pressure games is sometimes not easy to draw. Economic measures, such as the cutting of development allocations, can amount to intervention under some conditions. Cassese argues that:

> *the decision simply to withhold economic assistance to developing countries or to stop the financing of international institutions promoting development, does not amount to an infringement of the principle, if such decision is warranted by serious difficulties on the part of the granting state or by a change in its policy that is motivated exclusively by domestic considerations* [27]

In the case of EU, it is difficult to see how it would justify such withhold by any serious difficulties or domestic considerations directly linked to the question of development. So, the use of such incentives would clearly not be justified and by coercing a state to enter into co-operation and foster its migration policies to take path wanted by EU could amount to intervention. But it should be taken into account that several forms of intervention have been considered as legitimate. Would interference in the domestic affairs of the state concerning migration be a legitimate exception to the principle of non intervention?

---

[24] CASSESE, 2007 p 53

[25] BROWNLIE, 2008 p 292

[26] The most discussed of its exception is probably the humanitarian intervention considered as the most critical

[27] CASSESE, 2007 p 54-55

"Political Conditionality" has been often used in the case of interference in the internal affairs of a state for the respect of Human Rights and progress towards democracy. In this case it refers to the allocations of aid to encourage the political reforms and though considered as inconsistent with the principle of non intervention, its efficiency was the topic of numerous discussions rather than its legitimacy[28]. This type of intervention is justified by values which are considered in the interest of the population, the state "victim of" intervention and the whole community.

In the state of international migration, where destination states as EU member states appear to face growing migration flows and the first and only ones concerned by the question, it is clear that such intervention would never be seen as justified by the interest of third state, country of origin or transit. But it can be argued that it would be in the interest of the whole community to oblige states to regulate migration: it could lead to the decrease of the crimes linked or perceived as linked to it such as trafficking, smuggling or even terrorism.

To sum up, intervention is less likely to be considered as legitimate for three reasons. First, migration is still considered by the majority of the international community as falling under the reserved domain of states. Second, EU would only have the weight to intervene in countries which are highly dependent of its allocations, countries which would not necessarily represent the main countries of origin or transit of irregular migrants.
Finally, regulating it and "combating" irregular migration is still perceived as being only in the interest of the destination states which is a bar to the legitimization of intervention in this domain. Clearly, negative incentives do not appear as the best solutions to find a way in the impasse in which EU finds itself in agreements related to migration.

Turkey is still negotiating readmission agreement with EU. The Union is using positive incentives to obtain its consent on some issues such as the readmission of irregular third country nationals. But contrary to states which are not ready to embrace EU migration

[28] WALLER,1995 p 110

policies, Turkey, an endless candidate to the Union, has undertaken deep changes to be in accordance with EU standards by adopting the acquis communautaires. Those acquis are nevertheless perceived as putting Turkey under pressure "as to bend to EU interests"[29].

3.1 **Section 4** From influence to Europeanization – Policy transfer, the case of Turkey

Ukraine, Libya and Turkey are acknowledged to be the countries the most influenced by EU policies. Human Rights Watch has declared that the "pressure" of EU pushed Libya to abandon its "previous open door policy for foreigners" and Ukraine to adopt the most critical aspects of EU migration policies[30]. In a paper on neighboring countries, CLANDESTINO, it was stated that "the National experts' reports compared here agree that the EU has decisive influence on the Countries policy making and outcomes" referring to Turkey[31].

This decisive influence takes the form of policy transfer. The most advanced transfer is referred in the literature as "Europeanization" of third country policies.

The Europeanization is a far more advanced process than the externalization though it can be considered as one of the form it can take.

Europeanization can be defined as any "processes of construction, diffusion, and institutionalization of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms to a European model of governance, caused by forms of cooperation and integration in Europe" [32].

Those processes presuppose an EU membership conditionality[33].

---

[29]Kaya, 2007 p 24

[30] Human Rights Watch, 2006

[31] Kaya, 2007 p 24

[32]ICDUYGUIN, 2004 p 202

[33]Accession Partnership of Turkey

As a potential member, in 2003, Turkey launched a National Programme on the adoption of EU acquis communautaires, the "National Action Plan". It intended to initiate the harmonization in both asylum and migration field.
This action plan is a clear example of "Europeanization" of Turkish policies and legal instruments. In 2008, when the Accession Partnership of Turkey was rediscussed by the Council[34], the adoption and implementation of the acquis "best practices on migration with a view to preventing illegal migration" was set up as a medium term priority while as a short term priority it was reminded that Turkey must "increase [its] capacity to combat illegal migration in line with international standards".

Turkey is both a country of immigration and emigration. However, it is only since the nineties that it has seen flows of foreigners coming, and a growth of the number of irregular migrants. Three categories of irregular migrants can be nowadays identify in Turkey: -(1)those who came to work and whom the visa have expired –(2)those who transit, with an illegal entry and departure to EU –(3)and rejected asylum seekers who stay illegally.
In its relation to EU it is of course Turkey as a country of transit which is the main focus; in fact transit migrants have been identified as being the most important group out of those three[35]. In addition, it has become a de facto country of refugees despite the geographical limitation of the 1951 Convention it applies.

By adopting the EU acquis communautaires, Turkey agreed to withdraw this geographical limitation by 2012. From this date, it will have to process the claims of asylum seekers coming from non European countries such as Iraq, Iran, and Afghanistan - who were previously resettled with the help of the UNHCR in other countries when recognized as refugees - which are among the most important groups seeking protection transiting via Turkey to Europe[36].

[34] COUNCIL DECISION 2008/157/EC

[35] ibid

[36] IOM, 2003 p 18

In addition EU member states, if they wish so, will be able to go further in the negotiations with Turkey by signing readmission agreements of asylum seekers based on the safe third country rule[37]. Upon, its accession to EU, it is anyway certain that the Dublin Regulation will be applicable to Turkey which will decrease the number of claims in EU significantly for some groups of asylum seekers[38].

This shift in migration policy has an important cost. EU has consequently adopted a "burden sharing" approach by which it agrees to participate in the financing of such changes in solidarity with Turkey. The Union is, for instance, financing twinning projects.

Those instruments of pre accession assistance usually involve one or several member states in assisting Turkey in its alignment with EU standards (in transportation, environmental fields for example) and are financially supported by EU through the pre accession programme.

The twinning project on "support to Turkey's capacity in combating illegal migration and establishment of removal centers for illegal migrants" came into begin in 2007 and aimed at building and running the facilities by 2012.
Turkey will have for the first time center dedicated to the removal of irregular migrants.
Financial support, building capacities, training of staff are provided through this project. By reading its content, it is clear that the creation of those centers was not thought to deal with

[37] UNHCR, *Improving Asylum Procedure*, 2010 p 297. The safe third country concept is regulated in EU law by the directive on minimum standards on procedures in member states for granting or withdrawing refugee status. Recital 23 held that "member states should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country". This possibility must be prescribed by domestic law and some conditions must be fulfilled to make the sending of an asylum seeker to a third country valid. Since it will possible to request the status of refugee in Turkey for any applicant from 2012, Member states would be able to negotiate the application of such rule with Turkey providing that other conditions are fulfilled.

[38] European Commission, 2004 p 43

the new flow of asylum seekers and consequently of rejected asylum seekers that Turkey is going to face with the end of the geographical limitation of the Refugee Convention.
It was more thought for the achievement of "a better capacity to cope with illegal migration" in general.

In addition, those removal centers aim at facilitating the implementation of readmission agreements. The EU acquis and best practices on detention will be applied in those centers in order to ensure a better humanitarian situation for irregular migrants. It intends to be a positive progress for Turkey which is often pointed out for human rights violations in the field of migration.

Indeed, in 2008 the EU Progress Report of Turkey, assessing the progress in borders tasks and the readmission agreement concluded that there had been "little progress" on management of irregular migrants in Turkey, pointing out that it was still not possible to submit detention and removal decisions to a senior administrative and to a judicial review. In addition, the material conditions of detention were still considered insufficient and the absence of limitation of the length of detention was as well mentioned as lacking[39]. All those elements do not fulfill the obligations of Turkey under International Law though important changes seem to be ongoing on this question[40]. In 2007, the organization HCA published a report on the situation of asylum seekers in detention and through interviews with detained refugees drawn up a state of "foreigners' guesthouses" in Turkey which was highlighting the same elements[41].

The removal centers would possibly welcome three different categories of irregular migrants:
Irregular migrants "caught" in Turkey - failed asylum seekers - irregular migrants readmitted in Turkey under the EC/Turkey readmission agreement.

---

[39] *Turkey 2008 Progress Report*, p 71

[40] See chapter 3, section 4 of this thesis "Migration detention in Turkey"

[41] Helsinki Citizens Assembly, 2007

All of them would be detained under a removal procedure in order to be sent back in their country of origin or a country of transit when possible. The removal procedures could be facilitated by further readmission agreements between Turkey and the countries of origin or transit.

CHAPTER 2 READMISSION AGREEMENTS AND THE PERSPECTIVE OF REMOVAL2

Expulsion, deportation, removal, return… all those words usually refer to the transfer of a third country national to its country of nationality[42] when his stay has been identified as illegal.

Under international law, states have a wide margin of appreciation on the expulsion of aliens due to its sovereign right over its territory. Nevertheless it is commonly acknowledged that states authorities must take into account the interest of the person expelled by considering the consequences of the expulsion on his fundamental rights[43].

Readmission is an administrative process between two states on "transfer" and admission of illegally staying third country nationals and failed asylum seekers. Readmission agreements are part of an efficient return policy by which third country nationals voluntarily return or upon whom a removal procedure is.

This readmission can take the form of an agreement dealing specifically with it or of a clause included in broader agreement dealing for example with development[44].

Since the Amsterdam treaty the EC has the legal power to conclude such agreements[45]. To date, it has eleven agreements and seven under negotiations. It can as well be signed directly between a member state and a third country. By the end of this year, the

[42] In some countries, such as Australia, deportation is the transfer of individuals to protect the national security or because of the commission of specific offences while removal refers to the migration act of transferring an irregular non citizen.

[43] Goodwin-Gill, 1978 general

[44] Those clauses are mandatory in all agreements signed between the European Community, its member states and third countries in accordance with the Council decision of 2th December 1999 which was not published in the Official Journal

[45] See article 79(3) TFEU and article 218 TFEU

readmission agreements already implemented should have been the object of an assessment report.

Readmission agreements repeal the right of state to expel aliens from its territory and set a framework of conditions for the validity of the transfer and alleviate all the administrative requirements previously necessary, such as the issuing of a consular laissez passer.

2.1 **Section 1** States' obligations under a readmission agreement

In law, a right presupposes a corresponding obligation though this is not always the case[46]. If a state has a right to expel, it entails an obligation for another to receive the expellee.

Consequently it is generally accepted that states have an obligation to take back their own citizens. This obligation is often justified by article 13 of the Universal Declaration of Human Rights: "Everyone has the right to leave any country, including his own, and to return to his country ".

Indeed if a state has to readmit its citizens who return by their own will, they have as well to do so when it is the consequence of the sovereign right of another state to expel aliens who have breached its immigration laws. It should be reminded that this breach does not give a punitive character to the expulsion.

It could be argued that, as right to expel and obligation to receive are customary rules, readmission agreements are only a useless repetition of a practice accepted as law. Indeed, the practice of expulsion is not new and since the 60's its procedure has been materialized by readmission agreements[47].

But, those agreements are merely considered necessary to tackle the lack of cooperation of countries of origin or transit and aim at facilitating the procedure. They are as well indispensable when the readmission concerns third country nationals or stateless persons who have transited through the receiving country as no international instrument lays down

[46] See previous chapter, the right to leave one's country does not entail an obligation for states to receive except when the third country national falls under the conditions set by the refugee convention.

[47] BOUTEILLET-PAQUET, 2003 p 359

any obligation to readmit them[48]. The EctHR has actually stated that the removal of a third country national to a country which is not his or her country of origin is carried out without proper legal procedure when no readmission agreement has been signed between the two countries[49].

Actually, third countries have always been called for cooperation in the procedure of return. They have been asked to facilitate the transit in their territory of irregular migrants upon whom removal was carried on[50] regardless of whether or not the person had transited through their territory. Nowadays third countries are asked to take back third country nationals who have transited on their way to the country of destination. They will have the responsibility to carry on further return procedure to the country of origin when possible.

The principles of « good neighborliness » would justify such responsibility in that transit countries must readmit third country nationals if they « supported or tolerated the illegal migration of nationals of third states in a reproachable manner »[51].

As said previously, those readmission agreements repeal the right of sates to expel aliens but not their obligations under international law concerning deportation. It simply reminds that they shall be without prejudice to the rights, obligations and responsibilities arising from conventions and other agreements relevant to the issue of readmission. But, one obligation must be reminded here: the principle of non refoulement. This principle prohibits the return or extradition of a person to another state where there are substantial grounds for believing that he or she would face the risk of being subjected to torture or to inhuman or degrading treatment or punishment. Article 3 ECHR rebels this principle of customary law[52]. Though the 1951 Refugee Convention limits its applicability, the

---

[48] Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), 2002, p10

[49] *Abdolkhani and Karimnia v. Turkey*, 2009 para 84

[50] Recommendations Prague Ministerial, 1997 recommendation no. 28
And, Readmission agreement EC- Pakistan, article 11.1 by which Pakistan agrees to help in the return of third country nationals when the state of destination has committed itself to readmit the person

[51] Hailbronner, 2002

[52] To be found as well in Article 3 of the U.N. Convention against Torture and article 7 ICCPR

dispositions of those three conventions apply to every person. The principle of non refoulement is absolute.

Consequently, states have an obligation not to deport when the person is facing a real risk of being subjected to treatment contrary to those articles[53] and according to the EctHR the removal to an intermediate country does not prevent the state deporting to fulfill its obligation under article 3 regarding the consequences of a subsequent removal ("chain of events")[54] .

It must be assessed before removing someone to a transit country that it will not send the expellee to a place where he could face ill treatment. This risk must be foreseeable for the removing state.

So, the state must foresee two elements: (first) that the expellee will be the object of a subsequent removal – by a deportation order previously issued by the receiving state[55] or from the general practice of subsequently removing - to a state where (second) there is a real risk of treatment contrary to article 3 ECHR.

Readmission agreements do not prevent states to assess on a case by case basis the consequence of the removal. They do not presuppose that the receiving states will fulfill, in addition to its obligation under the agreement, its obligations under international law.

2.2 **Section 2** Perspective of removal – Readmission agreements between Turkey and countries of origin or transit

As seen before readmission agreements do not repeal obligations of states under international law. Consequently, when no human rights safeguards have been guaranteed the cost of those agreements could be high. Indeed, EC ask third countries to deal with the repatriation and/or the temporary stay or permanent residence of irregular migrants. But, it

[53] *Saadi v. Italy*, 2008, para 125

[54] *T.I.V v. UK* (dec.), 2000-III

[55] Ibid

is difficult to expect countries with less means and experience than EC to deal with their cases in a manner fully respecting international standards. This is even more critical concerning irregular migrants whom transit route are identified but not their nationalities[56] or those for whom return to the country of origin is impossible for any reason. There is a high risk in this case that those migrants will be indefinitely locked or left to traffickers.

This question is so problematic that EC should exclude non nationals in readmission agreements "to appease Human rights and international concerns" according to some commentators[57] .

EU has been, with difficulty, negotiating a readmission agreement with Turkey including third country nationals. The negotiations have nevertheless known a "substantial progress" recently[58].

And, to ensure that third country nationals will be sent back to their countries of origin - regardless of whether or not they have been previously sent back from Europe to Turkey - Turkey has already signed readmission agreements with Syria, Kyrgyzstan, Romania and Ukraine. Negotiations are ongoing with Pakistan according to the Turkish Ministry of foreign affairs[59]. It seems that Turkey is as well negotiating with Lebanon, Russia, Bulgaria, Sri Lanka, Jordan, Uzbekistan and Libya[60]. It proposed a readmission agreement to Afghanistan in 2008[61]. In addition, discussions are in process with Lebanon, Azerbaijan, Bangladesh, Belarus, Bosnia and Herzegovina, FYROM, Georgia, Moldova and Uzbekistan[62].

---

[56] It might be difficult for the receiving country itself to find the nationality of the expellee. But it seems that the nationality of the irregular migrant must be identified before being sent to the transit country see Readmission agreement EC-Pakistan,
Article 5(1) b:"Readmission application must contain: indication for the means for the proof of nationality, transit…"
article 4(3):"No one should be readmitted only on the basis of prima facie evidence of nationality"

[57] ROIG, 2007 p 382

[58] Conclusions on Turkey, European Commission, 2010 [p 7]

[59] Republic of Turkey Ministry of foreign affairs' website

[60] Justice, Freedom and Security: Enlargement, Evaluation on Turkey

[61] *Turkey 2008 Progress Report*, p 71-72

[62] *Turkey 2010 Progress Report*, p 82

In addition, according to an independent Turkish journalist, Turkey is asking EU to negotiate readmission agreements and to include a "Turkish clause", to facilitate the last return procedure from Turkey[63]. EU has probably more incentives to offer in negotiations than Turkey, but it would take the risk of being associated with any deplorable consequences of a removal by Turkey with such clause.

Signing readmission agreements with third countries is for sure in the interest of Turkey, to ensure the fulfillment of EU requirements in the fight against illegal migration; though by looking at the effectiveness of the readmission agreement signed with Greece, it should be added that such agreements would only work if both countries party to the agreement fulfill their obligations and can ensure respect for the human rights of migrants.
Indeed in 2002, the readmission agreement between Greece and Turkey entered into force. But this agreement did not trigger many official readmissions[64], as illegal deportation by Greece authorities to Turkey seems to be the rule. This practice has serious consequences on the right to seek asylum. Cases are often not processed by Greece before being sent back to Turkey[65].

This issue of refoulement of asylum seekers who consequently do not have access to a proper claim procedure and are the victim of chain refoulement may not rise under EC-Turkish agreement as it will only concern irregular migrants and failed asylum seekers. As the Commission has precised concerning the agreement between Pakistan and EC: "EU law requires Member States to ensure that third country nationals present on the territory of the Member States may apply for international protection if they so wish and that in particular the Treaty, the Asylum Qualification and the Return Directive make it clear that Member States must respect the principle of non-refoulement in accordance with their international obligations. The Commission also recalls that EU Member States are in particular obliged to ensure, in all cases, that no return is effected in violation of the European Human Rights

[63] Bozkurt, 2010

[64] Human Rights Watch, 2008 p 36

[65] Norwegian Helsinki Committee, 2009

Convention and the EU Charter of Fundamental Rights, which oblige States to ensure that a person should not be returned if he or she would be likely to suffer serious harm on his or her return to a country of origin or transit."[66]

The last statement has a quite important echo in the case of Turkey which has been condemned by the EctHR for the absence of guarantees in detention and pointed out concerning the conditions of detention which amounted to a violation of article 3 ECHR according to the European Court[67].

To sum up, following EU standards, Turkey will have first to make certain that readmitted irregular migrants will be treated in accordance with human rights law notably concerning their detention pending a further removal to their countries of origin or transit. Second, it will have to make sure that asylum seekers will have had access to a proper asylum claim before being removed from its territory.

In addition, it will have to ensure that the removals will be in accordance with the principle of non refoulement (article 3 ECHR) and will be carried out in respect of human rights standards on expulsion. It will have to assess whether or not the person will face a risk of being the victim of treatment contrary to article 3 ECHR in the receiving state, but as well in a state in which this person might be subsequently deported when Turkey removed him or her in a transit country.

The list of countries with which Turkey is negotiating or has signed agreements is not without concerns. Some of them have not signed the relevant human rights treaties and are well known for their recurrent violations of human rights[68]. Some others could be considered at some point as being in a general situation of violence. The EctHR has held that such general situation of violence does not normally in itself entail a violation of article

[66] Readmission Agreement between EC –Pakistan, Procedure file

[67] *Charahili v. Turkey*, 2010; see next chapter on the legal framework of detention

[68] BBC News, 2010. Libya has just accepted to start protecting migrants with EU help

3[69]. In order to determine whether or not there is a risk of ill treatment the personal circumstances and the general situation must be taken into account. But it has as well recently stated that

> *the court has never excluded the possibility that a general situation of violence in a country of destination will be of sufficient level of intensity as to entail that any removal to it would necessarily breach article 3 of the Convention. Nevertheless, the Court would adopt such approach only in the most extreme cases of general violence, where there was a real risk of ill treatment simply by virtue of an individual being exposed to such violence on return*[70]

Turkey will have to assess the situation of the receiving countries for each individual case, despite the readmission agreements, to avoid breaching any of its obligations under international law[71].

---

[69] See on Iraq, *Müslim v. Turkey*, 2005 para 70 "La cour réaffirme qu'une simple possibilité de mauvais traitements en raison d'une conjoncture instable dans un pays n'entraîne pas en soi une infraction à l'article 3 […], d'autant moins qu'en l'espèce une évolution démocratique est en cours en Irak et que l'on mesure d'espérer que cela entraîne à l'avenir une amélioration de la conjoncture actuelle" (only available in french) See on Afghanistan, *Sultani v. France*, 2007 general

[70] *NA v. UK*, 2008 para 115

[71] The situation of countries which are not in a general situation of violence but in which the humanitarian situation is critical, such as Pakistan which has faced a devastating disaster, is still a pending question. The development of the EU – Pakistan readmission agreement will be interesting to see how such situation will be dealt with at first by the Union

CHAPTER 3 DETENTION AND MIGRATION: LEGAL FRAMEWORK

3.1 **Section 1** International and Legal Framework

3.1.1 **First subsection** Detention, deprivation of liberty and restriction upon liberty of movement

In our societies detention is a serious decision and an exception to the principles guiding our democracies[72]. It is the last resort used by states to control and punish individuals who have harmed the society in a way or another. It is generally tolerated by the general opinion and no more serious punishment is used nowadays in most western countries since death penalty has been abolished.

A "detained person" is defined by the Body of Principles for the protection of all persons under any form of detention or imprisonment[73] as "any person deprived of personal liberty except as a result of conviction for an offence". The body makes a difference between "imprisoned person", who has been convicted for an offence, and "detained person". It is generally acknowledged that irregular migration must not be criminalized. As such irregular migrants cannot be convicted for their illegal entrance and can solely be detained.

Furthermore, in a commentary of the ICCPR, Nowak affirms that detention in its article 9 refers to "the state of deprivation of liberty".[74]

---

[72] The prohibition of arbitrary detention is an old standing principle see Magna Carta 1215: "No free man shall be taken or imprisoned [...] except by the lawful judgment of his peers or by the law of the Lord"

[73] UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment : resolution / adopted by the General Assembly*, 1988

[74] NOWAK, 2005 p 221 para 21

The ECHR refers to detention only within its article 5 on the deprivation of liberty[75] while it does not in article 2 protocol 4 on the liberty of movement.
However, expressions as "restriction on freedom of movement" and "deprivation of liberty" are sometimes used confusingly, as both referring to detention.
For instance, the International Organization for Migration (IOM) defines detention as a "restriction on freedom of movement usually through enforced confinement of an individual by governmental authorities".

This definition is inaccurate in two ways. First, as seen before detention is in no way a restriction upon the liberty of movement. Second, it refers to individual in general which encompass irregular migrants, refugees and asylum seekers. But, according to article 12 ICCPR and article 2.1 of the 4th protocol ECHR irregular migrants are excluded from the scope of the liberty of movement.[76] Thus technically and legally speaking irregular migrants do not enjoy such right and consequently cannot see it being restricted. Nevertheless the EctHR and the HRC have both avoided making such statement. The Court and the HRC have both abstain to clearly set who enjoy such right and who does not. Indeed when they have to make the difference between the restriction on movement and detention, they never based their reasoning on the status of the person. And, this gets round

[75] In both the ECHR and the ICCPR the deprivation of liberty can take the shape of « arrest » and « detention »

[76] Articles 12.1 ICCPR and 2.1 of the 4th protocol of the ECHR exclude explicitly irregular migrants by limiting their application to "Everyone lawfully within the territory".
The general comment General Comment No.27 (1999) of the Human Rights Committee (Para 4) shows that if states need to justify under the rules of article 12.3 any restriction of the rights of an alien who is lawfully on its territory, it does not have such obligations under this article for individuals having unlawfully entered, because the condition for this obligation to exist is the recognition of the lawfulness of the entry and stay.
It seems that both conventions start from the assumption that the mere fact of having entered a state without its authorization is a sufficient justification to withdraw the liberty of movement. In a world where states are obsessed by borders and where state sovereignty has still an important weight in migration issues, this statement might sound obvious.

having to determine who enjoys a liberty which stands as a *human right* which would be a controversial exercise.

The next question is what a deprivation of liberty is. The confusion of expressions between restriction of liberty of movement and deprivation of liberty as referring to detention is actually the transposition in wordings of a difficulty in drawing the line between the two in facts.

According to the HRC, article 9 can refer to incarceration within a building such as immigration detention centre or even one's home. The fact of being under a compulsory residence order for seven years with an obligation to report to the police three times a week and a prohibition from travelling freely in the state does not amount to a deprivation of liberty according to the Committee[77]. The EctHR held in Guzzardi v. Italy[78] that the difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance". This difference of degree, the Court refers to, is more or less similar to the notion of "severity" used by the HRC in that they both concern the effects of the measures.

In front of the EctHR in Guzzardi v. Italy, contrary to the HRC in Celepli v. Sweden, the plaintiff was confined to a part of an island and could only move within this area within a time limit with prior notification to the authorities. In addition he could not have any contact with the inhabitants of the island except those who were under the same measure than him. Though at first the measures in the two cases seem similar, as being described by the authorities as compulsory residence, it is clear that the degree of severity of the measure in the case in front of the ECHR in Guzzardi v. Italy is higher.

Contrary to cases involving mentally ill or disabled individuals where the deprivation of liberty is undertaken by psychiatric facilities and not state authorities, the Court does not refer directly to "the complete and effective control over care and movement" of the authorities to determine if the person is under a deprivation of liberty[79]. Nevertheless it

---

[77] *Celepli v. Sweden*, HRC, 1994

[78] *Guzzardi v. Italy*, 1980

[79] *HL v. UK*, 2000

takes into account the degree to which the person has to report his movement to the authorities which leads more or less to the same assessment. If there is no need to get an authorization, being under "special police supervision" does not amount to a deprivation of liberty[80] for instance.

To draw the difference between the deprivation of liberty and the restriction on liberty of movement, the EctHR has given more precised elements of assessment than the HRC. Indeed in the above cited case and Engel and others v. The Netherlands[81], the Court held that through criteria such as type, effects, duration and manner of implementation of the measure the concrete situation of the person must be assessed to determine if there is a deprivation of liberty.

This is done in a case by case assessment. For instance, the fact that a person can leave the country in which he is held for twenty days in an international zone at the airport does not mean that this person is not deprived of his liberty[82]. The confinement in a hotel for ten days amounts to a deprivation of liberty[83].

It is for this reason clear that it is difficult, not to say impossible, to list elements common to any deprivation of liberty such as a precise length of time or the place where the deprivation is undertaken.

The last element on which states tend to agree is that the detention of irregular migrants and asylum seekers is not criminal but administrative, as illegal entry must not be criminalized. Nevertheless, some states make effort to take such steps, as denounced by the Working Group on Arbitrary Detention[84]. As an administrative measure, their deprivation

---

[80] *Raimondo v. Italy*, 1994

[81] *Engel and others v. The Netherlands*, 1976

[82] *Amuur v. France*, 1996

[83] *Blume and others v. Spain*, 2000

[84] Working Group on Arbitrary Detention, HRC 13th, 2010

of liberty can be referred as "custody". In 1999, the WGAD started using such terminology in a report regarding the situation of immigrants and asylum seekers[85].
Some states, like France, tend to curve the reality by referring to the detention of irregular migrants with softer words as "retention administrative" (irregular migrants are not "détenus" but "retenus")[86]. The removal centers built by the project will be "accomodating" irregular migrants.
Whatever the word used to describe the situation of irregular migrants and asylum seekers detained, they are deprived of their liberty whatever the kind of detention they are under.

Once it is clear that detention must be understood as a deprivation of liberty and that a deprivation of liberty can take other form than a detention in a center, it must be determined who can be under this deprivation and in which circumstances. The asylum seeker must be distinguished from the failed asylum seeker and the irregular migrant whom stay on the territory is or has become illegal.
The detention of asylum seekers is here discussed briefly to underline the differences of right and perception between this group and those denied protection and irregular migrants.

3.1.2 **Second subsection** Loose prohibition of detention of asylum seekers

Asylum seekers are considered more vulnerable than irregular migrants. Their flight has been forced because of the persecution they may have been the victim of.
They flee to seek protection from another state. As detention is seen as a mean to punish, it seems obvious that the will of asylum seekers to reach a secured place should not be condemned by detaining them.

---

[85] Working Group on Arbitrary Detention, CHR 55th, 1998

[86] In French terminology, irregular migrants are not detainees in detention centers, which would be translated by "des détenus", but « des retenus » which could stand for « restrained person » in administrative centers.

Article 31 of the Refugee Convention prohibits the penalization of the illegal entry of asylum seekers. Their entry cannot be considered unlawful. For this reason they, in principle, do not fall under the cases of deprivation of liberty listed by the article 5 ECHR.
The UNHCR conclusion 44 clearly set that the detention of asylum seekers should be normally avoided[87]. They should be able to fully enjoy their right to liberty.
Some important exceptions have been drawn by the UNHCR. Asylum seekers can be detained "to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order"[88].

Those exceptions are quite broad and non precise. In addition nothing in the international instruments determines the length of detention. But at least contrary to some regional instrument, the exceptions are set.

Indeed, in EU law the detention of asylum seekers is permissible as long as it is justified by other reason than the mere fact of having claimed asylum[89] which leaves a wide range of manoeuvre for member states.
It is as well worth noted that when EU law defines detention, it refers to a deprivation of freedom of movement[90], confusion which is often found as previously stated.
Actually even the UNHCR defines detention of asylum seekers as "confinement […] where freedom of movement if substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory"[91].

---

[87] UNHCR, Detention, 1986 para b

[88] Ibid

[89] COUNCIL DIRECTIVE 2005/85/EC, article 18

[90] COUNCIL DIRECTIVE 2003/9/EC , Preamble recital 9

[91] UNHCR's Guidelines, 1999

This highlights how much the issue is controversial and lead to ambiguous definitions and legal texts. The detention in itself of asylum seekers is constantly challenged by international organizations and monitoring bodies nevertheless states keep on using it abusively.

The Refugee Convention is silent on the treatment of asylum seekers whom claims have been rejected.

In EU law, recital 9 of the return directive holds that "[…] a third country national who has applied for asylum in a member state should not be regarded as staying illegally on the territory of that Member state until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force"[92]. Their entry in the territory of the state processing their cases is considered illegal one they have received a negative answer.

Consequently, they must leave the territory of the state and are entitled to the same treatment than irregular migrants. They have the choice between forced removal and when available voluntary return with the assistance of IOM in most cases.

Though there is a clear absence of instrument specific to the treatment of rejected asylum seekers, human rights law and other standards on expulsion are obviously applicable.

As irregular migrants, failed asylum seekers are usually detained pending removal to avoid the risk of absconding. The debate concerning the detention of irregular migrants is most of the time based on the conditions of detention and not on the use of detention itself.

3.1.3 **Third subsection** Explicit approbation of immigration detention

"Immigration detention" refers in this part to the detention of failed asylum seekers and irregular migrants. This detention takes place at the end of the process of seeking asylum and in some countries applies only to those who do not voluntary return.

[92] COUNCIL DIRECTIVE 2008/115/EC , Preamble recital 9

The right to liberty is protected by article 9.1 of the International Covenant on Civil and Political Rights and article 5 of the European Convention on Human Rights. The principle is simple: "Everyone has the right to liberty".

Both articles have exceptions. The ECHR enumerates the cases where exceptions are allowed and expressly include the case of irregular migrants[93].

The fact that the exception is clearly held in the ECHR shows that nothing in this convention is against the deprivation of liberty of illegal immigrants and failed asylum seekers who are to be deported, while it was more difficult to categorically say so for the ICCPR.

Several communications of the Human Rights Committee were needed to make clear that the deprivation of liberty in migration cases fell under article 9 of the ICCPR[94].

By falling under article 5 ECHR and article 9 ICCPR the detention of irregular migrants must be lawful and not arbitrary. At first it seems that states would not need any other justification than the illegal entry or stay to deprive migrants from their liberty as it is their sovereign right to control the entry and stay of aliens. The HRC has challenged states, in cases involving asylum seekers, to go further in their justification of the detention than the mere fact of having entered the territory unlawfully and this in general wordings. The EctHR has not been as far as the HRC and does not require the same "level" of justification.

According to the ECHR there is no need for the detention to be the last resort as long as there is a fair balance between the purpose of the detention and the right to liberty[95] whereas the HRC has urged states to justify the detention.

According to the HRC, the illegal entrance and stay is not sufficient to consider a detention fair, other grounds particular to the individual must justify the use of detention such as the « likelihood to abscond » and the « lack of cooperation ». As we are not in cases involving criminal offences it seems that the authorities should prove by

---

[93] Article 5.1(f) ECHR

[94] *Hammel v. Madagascar*, HRC, 1990 or *V.M.R.B v. Canada*, HRC, 1988

[95] *Saadi v. UK*, 2008 para. 70-71

preponderance of evidence and not beyond a reasonable doubt that such risk exists. Proof of past escape seems to be the most obvious proof, when it comes to lack of cooperation, the absence of will to answer interviews or the destructions of identity papers seem to be the more relevant. In fact, the Committee has never given examples of elements which could be considered as relevant and sufficient to show the existence of a risk to abscond. In addition the authorities must show that no other means than detention was available to obtain the same result[96].

But the EctHR does not go as far as the Committee and does not require any other justification than the carrying out of removal to detain: « all that is required under this provision [article 5.1(f) ECHR] is that action has been taken with a view to deportation »[97].

Though no change might occur at the level of the ECHR we may see an evolution in EU states' practice thanks to a European directive and the ECJ, though it was recently denounced that the use of detention was in growth in EU states[98]. Indeed, the EU return directive[99] sets as a principle that the detention for removal may be used « unless other sufficient but less coercive measure can be applied effectively in a specific case ». The whole article of the directive is actually ambiguous. On one hand, it seems that states must justify the use of alternatives to detention when the use of detention appears to be useless in a « specific case ». On the other hand it states that « Member States may only keep in detention […] in particular when-(a) there is a risk of absconding or – (b) the third country national concerned avoids or hampers the preparation of return or the removal process ». Certainly the existence of alternatives to detention is for the first time cited in a binding instrument of EU law and this achievement considering the reluctance of member states should been seen as a positive step. Nevertheless, the principle and the exception should be made clear: « non coercive measure shall be used unless detention is the only sufficient measure in a specific case »[100]…

---

[96] *Mansour Ahani v. Canada*, HRC, 2002

[97] *Chahal v. UK*, 1996

[98] Resolution 1707 (2010), Parliamentary Assembly

[99] COUNCIL DIRECTIVE 2008/115/EC, article 15

[100] Personnal statement

It is as well worth noted that the preamble of this directive refers to a proportionality test « the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objective pursued »[101]. It implies that if the removal can be carried out without using detention, it is no longer justified though there has been illegal entry, stay and action is being taken to deportation.

To conclude, both the committee and the Court have never condemned the immigration detention.[102]

3.2 **Section 2** Legal standards of detention

3.2.1 **First subsection** Prohibition against arbitrary and unlawful detention

Both the HRC and the ECHR have clearly stated that a lawful detention can be arbitrary. The two notions have different meanings according to the Court and the Committee.

« the notion of arbitrariness » in article 5.1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention »[103]

« Arbitrariness is not to be equated with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability »[104]

The notion of *lawfulness* is clearly understood and defined. The detention must be prescribed by law. And this is a key element of fairness because it participates in predictability. In this sense an unlawful detention cannot be considered fair. But a lawful detention can be considered arbitrary. According to the ECHR to avoid all risk of

[101] COUNCIL DIRECTIVE 2008/115/EC, Preamble recital 16

[103] *Saadi v. UK*, 2008 para. 67

[104] *Hugo van Alphen v. The Netherlands*, HRC, 1990

arbitrariness the law must be of sufficient quality » and « sufficiently accessible and precise»[105].

So there is one element making a detention lawful at the domestic level: the prescription by law. There is a plurality of elements needed to make a detention fair: lawfulness is one of them.

Contrary to the ECHR the ICCPR does not list exhaustively the cases where the detention is permissible. This is actually the reason why the notion of lawfulness had been added to the text[106].

The law prescribing the detention must not be arbitrary as the manner in which detention is carried on. Both the convention and the covenant have opted for a broad interpretation of the notion of arbitrariness.

According to the EctHR the detention must be carried out in good faith and the purpose must be to prevent unauthorized entry of the person. As stated earlier the detention does not need to be the last resort.

The HRC has on his part identified elements which can make a detention arbitrary: inappropriateness and injustice[107]. The detention must be justified by the illegal entry and circumstances particular to the individual. The HRC refers to a proportionality test in which the necessity of the detention in all circumstances of the case must be assessed.

However, the ECHR uses a narrower proportionality test by referring to it concerning the length of the detention[108]. It should not be pursued longer than the reasonable time to proceed to prosecution. The detention is justified as long as the proceedings are in

---

[105] *Amuur v. France*, 1996 para50-53

[106] NOWAK, 2005 p 223 para 26

[107] *A v. Australia*, HRC, 1997 para 9.2

[108] Except in a case involving a child where the proportionality test was applied between the necessity of the detention and the rights of the child such as right to family and private life. See Mayeka and Mitunga v. Belgium, 2006

progress[109]. With the same spirit the HRC held that detention should not continue beyond the period for which the state party can provide appropriate justification[110].

In EU law, the "Return Directive" sets a maximum of 18 months of detention under certain conditions[111]. In a recent case, the ECJ has precised that "the detention ceases to be justified and the person concerned must be released immediately when it appears that, for legal or other considerations, a reasonable prospect of removal no longer exists"[112].
The reasonable prospect of removal does not exist "where it appears unlikely that the person concerned will be admitted to a third country"[113].
The detention ceases to be justified in two situations: first when it is clear that there is no chance for the person to be removed, which can be realized before the end of the maximum period; second when the maximum period of detention has elapsed and no removal could be carried out.
The Court added that the fact that a person concerned does not have "valid documents […] has no means of supporting himself and no accommodation or means supplied but the member state for that purpose"[114] cannot prevent his release.

Another element must be taken into account according to the EctHR to make a deprivation of liberty fair: the conditions of detention. Indeed, the "place and conditions of the detention should be appropriate"[115] as the "measure is applicable not to those who have committed criminal offence but to aliens who, often fearing for their lives, have fled from

[109] *Saadi v. UK*, 2008

[110] *A v. Australia*, HRC, 1997 para 9.4

[111] COUNCIL DIRECTIVE 2008/115/EC article 15.6

[112] *Said Shamilovich Kadzoev v. Direktsia "Migratsia"pri Ministerstuo na vatreshnite raboti*, European Court of Justice, 2009

[113] Ibid para 67

[114] Ibid para 71

[115] *Saadi v. UK*, 2008 para 74

their own country"[116]. It seems that this last sentence refers to migrants in general as it does not refer to any element of persecution.

Article 10 ICCPR deals with the right of detainees to be treated with humanity and dignity. This can explain why the HRC has not explicitly held that the conditions of detention must be an element of assessment of the arbitrariness.

The Working Group on arbitrary detention has set up several guarantees for the assessment of the arbitrary character of the detention[117]. Those guarantees do not only concern the length of time, the last resort and the condition of detention. It goes further by holding the accessibility of the information in an understandable language or the review of the decision of detention by a higher Court as key elements of assessment of arbitrariness. But the WGAD points out that to come to the conclusion that the detention is arbitrary, the violation of those guarantees must be "a matter of a high degree of gravity".

3.2.2 **Second subsection** Guarantees in and Conditions of detention

This subsection aims at drawing the legal standards applicable in detention. It will be descriptive and for this reason brief. The report of Amnesty international "Migration Related detention" has been a useful tool in the writing of this part[118].

The migrants, asylum seekers or refugees deprived of their liberty must be informed of the reasons for the detention in a language they understand properly. This right is protected by article 9.2 ICCPR and 5.2 ECHR.

Once the decision has been taken and the migrants informed, he must be entitled to an effective remedy as prescribed in articles 9.4 ICCPR and 5.3 ECHR. The HRC has précised that to be effective the Court must be able to reverse the decision[119]. The same principle is guaranteed by article 5.4 ECHR. The question before the Committee and the Court has

---

[116] *Amuur v. France*, 1996 para 43

[117] Working Group on Arbitrary Detention, CHR 55th session, 1998

[118] Amnesty International, Migration related detention, 2007

[119] Rebelled in *C v. Australia*, HRC, 2002

been whether or not this remedy must take place in front of a jurisdiction or a simple authority. The ECHR held that when the decision to detain is taken by an administrative body which does not have the prerequisites of a court the remedy must be done in front of one which ensures "the fundamental guarantees of procedure applied in matters of deprivation of liberty"[120].

In the same spirit, the notion of court is not limited to a "court of justice" in the ICCPR. No definition of "court" has been drawn by the HRC from article 9 ICCPR. But, article 14 on procedural guarantees in Civil and Criminal trials requires the court to be an independent and impartial body. An administrative authority granted with such qualities can be considered as a "court"[121] in some circumstances.

The last guarantee is the right to compensation in case of detention in contravention with the convention and the covenant. Article 5(5) ECHR and 9(5) ICCPR guarantee such right. Nevertheless the two protections must be distinguished. The Committee does not need to review whether or not article 9 has been violated if a domestic court had already established that the detention was unlawful, to ascertain whether or not the victim is entitled to compensation. On the other hand, the ECHR has to do so, because it can only grant compensation if the detention has been established as being in contravention of the provisions of article 5(1)[122].

On the condition of detention, both the covenant and the convention prohibit the subjection to inhuman or degrading treatment or punishment of detainees without any exception.

Article 3 ECHR is applicable to cases where he is detained awaiting expulsion: "the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period" amount to degrading treatment contrary to Article 3[123]. The cumulative effects of those conditions lead to the violation of article 3.

---

[120] ALVERMANN, 1971

[121] NOWAK, 2005 p 319 para 23-27

[122] Ibid p 237-240 para 53-58

[123] *Dougoz v. Greece* , 2001 para 48

Article 7 ICCPR lays down the same prohibition[124], but article 10 of the Covenant deals specifically with the conditions in case of detention. Detainees must be treated humanely and their dignity must be respected and the absence of material resources cannot justify the violation of this principle[125].
Other instruments and treaties deal with the conditions of detention and hold the respect for the dignity of alien in detention as fundamental and inalienable[126].

In EU law, the article 18 of the Return directive is quite exhaustive on the conditions of detention of irregular migrants. It guarantees contact with the outside world, an obligation for states to have specialized detention facilities for the removal procedure, it points out that vulnerable persons must be the object of a particular care and that organizations must have access to the facilities[127]. The absence of extensive dispositions on the conditions of detention can be explained for two reasons.
First, the detention facilities vary from a state member to another and it would be difficult to set up standards which could not be fulfilled by some countries.
Second, it is generally considered that human rights law and other international instruments already applied to the detention of irregular migrants, any further issues in this matter are then the concern of the state and not of the Community.

3.3 **Section 3** Best practices and alternatives of detention

3.3.1 **First subsection** Identifying Best Practices in Migration Detention

Though the conditions of detention vary significantly from an EU Member State to another, and according to the closed centers, some elements and characteristics are commonly

[124] General Comment No. 20, 1992

[125] General Comment No. 9, 1982 para 1

[126] Amnesty International, Migration related detention, 2007

[127] COUNCIL DIRECTIVE 2008/115/EC

found. For instance, most of the time centers are scattered or in overcrowded area where the attention of the local population cannot be attracted[128].

Another example is a consequence of the detention which is common to the centers and more or less strong according to the conditions: the vulnerability of the detainees. Their psychological well being is put at risk and even more when they already have vulnerability antecedents due to traumatic past experiences or inherent to their characters.

Minors, pregnant woman, elderly fall in groups which are predetermined as being vulnerable. As such they are protected and should be treated with more care and not being the victim of any severe measure which could lead them to serious psychological problems.

Nevertheless vulnerability can be the direct consequence of the detention. Nothing intra sec to the detained migrant presupposes any vulnerability but external factors such as the "prison like atmosphere" can have serious consequences on the person. It has been showed that "detention has the potential to harm any type of people: those with preexisting needs or otherwise healthy person"[129]. For this reason the human cost of detention is high and should be considered by authorities when deciding and implementing immigration policies.

Sweden is often considered as a leading country in the best practices concerning migration related detention. In 2009 the European Committee for the prevention of Torture, in its preliminary observations, was satisfied by the conditions of detention and the staff in charge of the facilities. It nevertheless found that the accessibility of the staff to health records of detainees was inacceptable and reminded that Sweden must avoid detaining aliens in common prisons as it happened in few cases[130] which show that even leading countries can easily have non proper practices.

The major difference between Sweden and other EU countries on the question of detention is that those detention centers are run by staff with a social education background and not

[128]LE COUR GRANDMAISON, 2007

[129] Jesuit Refugee Service-Europe, 2010 p12

[130] European Committee for the Prevention of Torture on Sweden, 2009

by the police. It ensures that detainees are not treated as common criminals and clearly mark the difference between the two types of institutions and their purposes. This feature should be supported by EU in its Member states and abroad.

Actually, to find examples of best practices in matter of migration detention the attention should be focused outside EU Member States.

3.3.2 **Second subsection** Alternatives of detention

Alternatives have been developed those past 10 years. Numerous international organizations have called for the development of alternatives[131]. The UNHCR in 2006 through a report on alternatives to detention of asylum seekers and refugees urged states to take steps towards those solutions[132]. In EU, the parliamentary assembly has deplored the growing use of detention and recalled that states should consider alternatives[133] and that minimum rules on conditions of detention must be agreed by Member States.

It is clear that the debate is not whether or not authorities should use detention but whether or not detention should be the default system in specific cases. We are far from the prohibition of detention in immigration cases but there are possibilities to drastically diminish its use.

The state the most referred to in matter of alternatives is Australia. After several condemnations from the HRC and the international community of its automatic mandatory detention without any time limit, it has developed alternatives applying to all immigration cases though it has as well acknowledged that mandatory detention is an essential

[131] Amnesty International, Alternatives, 2009

[132] UN High Commissioner for Refugees, Alternatives, 2006

[133] Resolution 1707 (2010), Parliamentary Assembly , 2010

component of strong border control[134]. It still applies mandatory detention to all unauthorized arrivals for the purpose of health check, identity and security check[135].

The main step forward is the development of alternatives **of** detention - which are still measures depriving migrants of their liberty - and alternatives **to** detention - which aim at restricting the liberty of movement. Those last alternatives have been particularly developed for asylum seekers.
Alternatives of detention go from the immigration residential housing –a secure and closed environment in the community or on detention centre grounds with restricted outside access- to community detention –live in the community with reporting requirement and support of NGOs.

Those alternatives have proved to be efficient. Political will to implement such alternatives is the brake to their developments.

3.4 **Section 4** Migration detention in Turkey

Turkey has been several times pointing out by organizations and international bodies concerning the detention of third country nationals concerning the absence of remedy, the length of detention and the conditions of detention amounting to degrading treatment. In 2007, the organization HCA published a report on the situation of asylum seekers in detention and through interviews with detained refugees drawn up a state of "foreigners' guesthouses" in which the absence of safeguards was highlighting[136]. The same year the Working Group on Arbitrary Detention was stressing that

[134] Evans Chris, Australian Senator, speech 2008

[135] Joint Standing Committee on Migration, Australia 2008

[136] Helsinki Citizens Assembly , 2007

> *there are no remedies for the foreigners awaiting expulsion to challenge their detention and no control over the detention by a judicial authority. It may be true that in some cases the person to be deported spends only a few days at the guesthouse. But in others, where there are difficulties obtaining valid travel documents (as appears to be the case for many African migrants), the detention can last months and even more than a year* [137]

And, in 2008 the EU Progress Report of Turkey, assessing the progress in borders tasks and the readmission agreement concluded that there had been "little progress" on management of irregular migrants in Turkey, describing conditions and standards of detention which did not meet the international requirements[138].

Indeed, Turkey has been "accommodating" foreigners in "guesthouses". This type of accommodation is not recognized under Turkish law as administrative detention though it has been acknowledged that it amounts to deprivation of liberty[139]. As not recognized as administrative detention, no review of the decision by a court had been set up.

Few cases on the conditions of detention in the foreigner guesthouses have actually been brought in front of the ECHR. This probably due to the fact that international organizations do not have access to foreigners' guesthouses[140] and that the access to lawyers is difficult for detainees. It must be noted that Turkey is not signatory of the Optional Protocol to the UN Convention Against Torture which establish a system of regular visits undertaken by independent international organizations and national bodies to places where people are deprived of their liberty to prevent torture and other cruel and inhuman or degrading treatment or punishment. Nothing in this circular address this issue, but the project financed by EU provides that international organizations will have access to the removal centers.

---

[137] Working Group on Arbitrary Detention, HRC 4th session, 2007

[138] *Turkey 2008 Progress Report*

[139] Global Detention Project website, Profile of Turkey

[140] Except the UNHCR for refugee claims.

Among the few cases, the EctHR had found in Z.N.S v. Turkey a violation of article 5§4 as the Turkish legal system did not provide with a remedy for a detention and deportation decision and a violation of article 5§1 for the absence of procedure setting time limits for the detention in domestic law[141].

In addition the Court, in Charahili v. Turkey, found a violation of article 3 of the Convention. It held that the conditions of detention of the applicant amounted to degrading treatment. However, considering the fact that it could not verify the veracity of the applicant's allegations, the court did not base its ruling on the material conditions of detention. It declared that the prolonged detention of the applicant in an ordinary police detention facility, which purpose is not immigration detention, did not meet the requirements of article 3 as according to the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment of Punishment the "conditions in police stations will frequently – if not invariably – be inadequate for prolonged periods of detention"[142] in immigration cases.

In the above mentioned case Z.N.S v. Turkey the Court came to the conclusion that the conditions of detention were not so severe as to amount to treatment contrary to article 3. The Court acknowledged that the undetermined period of time of detention could cause feeling of anxiety to the applicant, however other allegations concerning the conditions of detention were not considered as founded by the Court[143]. It is worth noted that, as no independent body has access to the guesthouses, it had to base its assessment of the material conditions on the photograph of the facility provided by both Turkish authorities and the applicant.

Turkey, in its alignment with European standards, has many issues to work on concerning the detention of third country nationals.

---

[141] *Z.N.S. v. Turkey*, 2010 respectively para 63 and 56

[142] *Charahili v. Turkey*, 2010 para 72-78

[143] *Z.N.S v. Turkey*, 2010 para 81-87

A positive step was taken in March 2010; the Turkish Ministry of Interior issued a circular on the fight against illegal migration[144]. The "foreigner guesthouses" will be from now on referred as "removal centers". Though the vocabulary used avoids "detention", it is clear that those removal centers aim at depriving irregular migrants of their liberty by detaining them pending removal. The annex 1 of the circular lays principles on the physical conditions in the centers.

The principles are in accordance with the minimum standards set by international law. Notably, in accordance with articles 9.2 ICCPR and 5.2 ECHR, the principle 6 holds that the irregular migrants must be informed of the reason of their detention and of the available legal remedies in a language they understand. Those remedies will have to be assessed; the body in charge of reviewing the decisions of detention will have to be independent and impartial to be in accordance with articles 9.4 ICCPR and 5.3 ECHR. Another significant positive step is the principle 16 which lays that the police personnel must be specifically trained to work in those centers and be in contact with irregular migrants[145].

In addition to those principles, the circular sets that, on request, irregular migrants must have access to the UNHCR in the center.

However, the circular does not refer to any precise time limit of the detention. The changes prepared in the law of foreigners will probably address this question. Following EU standards, Turkey would logically limit the detention in removal centers to 6 months and 18 months in cases where the third country national does not cooperate or where there is a delay in the obtaining of the necessary documentation from the third country[146]. The WGAD pointed out in its report in 2007 that there were difficulties obtaining valid travel documents mainly in the case of African migrants[147]. Turkey has not yet signed any readmission agreement with an African Country. Therefore the procedure of removal is still

[144] Circular on the Fight Against Illegal Migration (only available in Turkish)

[145] Turkey has not opted for centers run by social staff as it is the case in Sweden

[146] COUNCIL DIRECTIVE 2008/115/EC, article 15.6

[147] See above quotation from the WGAD

not facilitated to this continent. This issue may then persist and those migrants will fall under the 18 months exception, if there will be such limitation, similar to EU.
The circular leads to think that following the ECHR standards[148] Turkey will not require the detention to be the last resort. As long as the person entered or stayed illegally and that the procedure of removal is carried on, no circumstances particular to the individual will be required to detain. The circular refers however to alternative premises where the irregular migrants could be detained if indicated by the governorate[149]. But, no further precision is given on the nature of those alternatives premises.

All those changes are parallel to the refurbishment, construction, equipment of four removal centers with national Turkish founds[150]. Indeed, the building of removal centers is identified as a need by this circular. In some provinces the number of irregular migrants is still more important than the actual capacity in the facilities. The 2 removal centers financed by EU are taking part in this effort of change in the way of dealing with irregular migration.
It seems that Turkey in its quest to EU membership has integrated the ideas, concepts of the Union concerning the management of irregular migration. A country with few experiences in this area, just starting its reform process, Turkey can still choose to have a more comprehensive approach towards the issue and to opt for alternatives of detention for instance.

This circular has been welcomed in the Progress Report of 2010 as well as the preparation of the revision of the law on foreigners. Nevertheless, Turkey is called to fully implement the principles and to address the issues raised by the judgments in front of the EctHR[151]. The coming years will be crucial for Turkey, it will have to prove that those significant changes in its legislation will be reflected in the reality.

---

[148] Article 5.1 (f) ECHR

[149] *Turkey 2010 Progress Report*

[150] Ibid p 81

[151] Ibid p80-82

CHAPTER 4 OBLIGATIONS AND RESPONSIBILITY IN THE FINANCING OF EXTRATERRITORIAL REMOVAL CENTERS

This part will concentrate on the ICCPR and the ECHR for which both Turkey and EU Member States are parties. Actually, EU is not directly party to any Convention. Thus, it could not be held responsible for any violation of their dispositions. Nevertheless the European Court of Human rights considered that a Member state can be held responsible for the actions of a European body[152].

There is no point in discussing the legality of the financing of the removal centers by EU in itself. Indeed, as seen in chapter 3, the detention of irregular migrants is not prohibited under international law. Consequently, in any case financing the construction of facilities for this purpose can be regarded as violating any principle of international law. The purpose is legal. The issue here is whether or not EU could be held responsible for any violation of the rights of the detainees in the centers it will have financed.

It is generally accepted that a state is responsible for any violation of an individual's rights if this person is subjected to its jurisdiction wherever this violation occurred[153]. According to the EctHR "the term "jurisdiction" [referred to in article 1 of the Convention] is not limited to the national territory of the High Contracting Parties; their responsibility can be involved because of acts of their authorities producing effects outside their own territory"[154]. The scope of obligations under the ICCPR may at first appear as narrower.

---

[152] *Matthews v. UK*, 1999 para 34-35

[153] DUFFY, 2005, p 282

[154] *Drozd and Janousek v. France and Spain*, 1992, para 91

Indeed, article 2 is limited to "persons subject to a State's jurisdiction and within its territory". But the Human Rights Committee held that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a state party to perpetrate violations of the Covenant on the territory of another state, which violations could not perpetrate on its own territory"[155]. Clearly, the HRC has as well opted for an expansive view of the state's obligation under the Covenant.

The fact that those removal centers are situated outside EU Member States' territories is not a bar to the jurisdiction of those states.

The HRC as well expressed that what actually maters to establish the responsibility of a state is not "the place where the violation occurred, but rather to the relationship between the individual and the state in relation to a violation of any of the rights set forth in the Covenant wherever they occurred"[156]. What kind of relationship does the Committee refer to?

The answer can be found in the General Comment 31: "a state party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control even if not situated within the territory of the state party"[157].

The effective control of the state determines whether or not it has jurisdiction and consequently its responsibility for any violation of rights. The EctHR in Loizidou v. Turkey held that

> *the responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration*[158]

---

[155] *Lopez Burgos v. Uruguay*, 1981 HRC

[156] Ibid

[157] HRC General Comment no. 31, at 10

[158] *Loizidou v. Turkey*, 1995, para 62

But, in Bankovic v. Belgium and Others it precised that extraterritorial jurisdiction must be regarded as exceptional. According to this case it exists as "a consequence of military occupation or through the consent, invitation or acquiescence of the government of that territory" and when there is exercise of "some of the public powers normally to be exercised by that government"[159].

Clearly, Turkey acquiesced the financing of the removal centers, and the building of such facilities is part of its immigration policy on border control which comes from its sovereign right to decide who can entry and stay on its territory. It, then, falls within the powers which Turkey normally exercises.

But the elements of Bankovic refer to military occupation in which agents of the state are involved and exclude cases where there is not occupation but where the state's acts nonetheless affect individuals. This case is actually regarded as controversial in many ways by some scholars as it narrows the scope of application of the ECHR and though it has been referred to in the following jurisprudence it must not lead to the ignorance of other cases where jurisdiction was not defined so restrictively.

In the financing of removal centers, a tiny area is concerned and the control, if there is, is not obtained by exercise of military action but through financing. In addition, EU will not be running the centers. The Turkish authorities, administration will be in charge of it.

In Cyprus v. Turkey, the Court found that a state can be held responsible for the act of the local administration, in another territory,"which services there survive by virtue of its military and other support"[160]. But still, in this case again, military occupation led to the overall control of the area and thus the jurisdiction of Turkey over it.

Loukis Loucaides, in an EctHR judgment opinion, expressed the idea that jurisdiction "may also extend in the form of the exercise of domination or effective influence through political, financial, military and other substantial support of a government of another state". To him, "the test should always be whether the person who claims to be within the

[159] *Bankovic v. Belgium and others*, 2001, para 71

[160] *Cyprus v. Turkey*, 2001, para 77

jurisdiction of a state […] can show that the act […] was the result of the exercise of authority by the state concerned"[161].

It could be argued that EU does not exercise any authority as simply providing the funds. It gives an "assistance budget" to Turkey. But the Union is participating with 15 000 000 Euros on 19 433 333 that the project costs. It would not be viable without its funding.

By financing in major part those centers it can clearly play a dominant role on the way it should be conducted. However, as previously said, EU is only financing the constructions; the centers will be run by Turkish officials through Turkish funds.

In Ilascu and others v. Moldova, the EctHR held that even if Moldova was not in control of the region where the violations occurred, it had positive obligations to fulfill under the Convention as it was formally within its authority and officially part of its territory. Here, the effective control of the territory was not required, but Moldova is officially recognized as having jurisdiction over it. It consequently had positive obligations towards this area under the Convention. This judgment was criticized for too much stretching the notion of jurisdiction.

The same critic could be drawn if EU would be considered responsible for violations of rights of individuals it never had the control on. By financing the construction EU is clearly dominant in any activities, related projects during the period of construction. It must nevertheless be noted that the funds will actually be managed by a Turkish administrative body: the Central Finance and Contracts Units of the Minister of Treasury. It could be an element limiting even more EU responsibility as the Union will not be deciding how the money will be distributed in the different areas of the project.

Clearly, to determine if EU has a responsibility in the violation of rights of detained irregular migrants, it must be determined whether or not the contribution of EU had an effect on the occurrence of this violation. EU can only be considered as having control of those centers concerning their constructions and actually the training of the staff which is part of the project.

---

[161] *Ilascu and others v. Moldova and Russia*, 2004, partly dissenting opinion of judge Loucaides, p 140

Indeed, in this project, the personnel of the centers will be trained on EU standards. The EU funds will consequently be partly directed to this aim.
Does EU have any obligation regarding the training of the staff?

Under the U.N Convention Against Torture, Member States have to ensure that

> *education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*[162]

There is no requirement of "jurisdiction and control" in this article. Thus, EU has a positive obligation, as torture must be prevented and prohibited, to make sure that this project will provide proper trainings.
To conclude, EU would not be held responsible for any violation of detainees' rights having regard to the characteristics of the project: though EU is dominant in the financing of the construction, it will not be in the running. EU is providing the facilities for the detention, detention which is permitted under international law as seen previously.
However, EU will still be responsible in the case of irregular migrants sent to Turkey and detained in any removal centers in case of treatment contrary to article 3 ECHR and 7 ICCPR as it was stated in chapter 2.

The additional question here is whether or not EU could be held responsible for a deprivation of liberty in those centers following removal which would not meet the international standards.
The HRC has found violations for deportation while the individual was facing a foreseeable risk of death or torture but it never did in other circumstances[163]. The General Comment 31

[162] UNCAT, article 10

[163] JOSEPH, 2004 p 94

refers to the foreseeability of an "irreparable harm" and gives as example right to life (article 6 ICCPR) and freedom from torture (article 7 ICCPR)[164].
The ECHR held on this question:"whether an issue could be raised by the prospect of arbitrary detention contrary to article 5 is even less clear" while comparing this hypothesis to the prospect of flagrant denial of fair trial under article 6 of the Convention in case of deportation. But the Court in this case did not focus on this point as the applicant did not bring elements indicating that he would actually face such risk. Therefore, it came to the conclusion that there was no forseeability of such event: "a possible future unspecified problem with the authorities is too remote and hypothetical basis for attracting the protection of the Convention in this regard"[165].

Thus, having regard to the state of international human rights law, if the deprivation of liberty does not meet the guarantees under the Covenant and the Convention, it is unlikely that the person facing such risk will not be deported.
But, if the conditions of detention while deprive of liberty amount to treatment contrary to article 3 ECHR and 6, 7 ICCPR, the Court could find a violation of those articles in case of removal.

EU could not be held responsible in case of violation of detainees rights in the removal centers it will have financed. It will not exercise any authority via, for instance, fundings for the running. Nevertheless, it could be found responsible in case of violation of right in to life or freedom from torture in those centers in case of removal.

[164] HRC General Comment no. 31, at 12

[165] *F v. UK*, 2004 para 2

CONCLUSION

The project by its characteristics is a perfect illustration of the evolution of the way migration is dealt with: an extraterritorial project on an issue still considered as a reserved domain under international law.

In nature, migration has obviously an international dimension. It involves individuals of different nationalities crossing borders of national territories. But, the old maxim according to which it is a ” matter of well established international law and subject to its territory obligations, [that] a state has the right to control entry of non nationals into its territory” is still persisting under international law. Though migration is recognized as a transboundary issue and that states have come to negotiate on it, this principle is still holding as a bar to any treaties specifically dealing with the status and the rights of migrants. Consequently, in principle, it still falls under the sovereign right of Turkey to decide which policy to adopt towards irregular migration within the framework of Human Rights Law.

However, the externalization of EU migration policies coupled with the will to become a member of EU has led to the “Europeanization” of Turkish migration laws and policies. In any case the action of EU could be regarded as amounting to intervention even though the Union has to use on some issues strong incentives to make Turkey do what it deems necessary to attain international and EU standards. A possible membership to the Union can in itself be regarded as such incentive. It would be nonetheless naïve to believe that EU is simply supporting changes in Turkey to facilitate its membership; it clearly aims at promoting its interests concerning the management of migration flows.
The removal centers are enshrined in this process of Europeanization and by improving the capacity of management of Turkey, they aim at participating in the decrease of the number of irregular migrants coming to EU Member States territories.

This project comes at a point where Turkey is simultaneously undertaking important legal changes in the Turkish Law of Foreigners and negotiating readmission agreements. Those agreements are under international law crucial to ensure a legal procedure for the removal of third country nationals to a transit country. It ensures that the transfer will be facilitated and that the procedure will be carried out until its final aim, avoiding releasing individuals in absence of possible removal or of indefinite detention in worse cases. For this reason, readmission agreements are facilitated by the removal centers and the running of the centers is actually facilitated as well in return as non irregular migrants would be left in a black hole situation.

The project is a brick in the wall. It could be reproached to EU to start building removal centers in a country where the practice still show important loopholes on the treatment of migrants in the practice. But it can be opposed that EU is actually providing the means to Turkey to handle migrant cases notably when they are under a removal procedure. Such argument actually lead to think that those centers are a minor contribution compared to all the challenges that Turkey is facing and will face.

Nothing in International Law is a bar to the financing of removal centers by EU: the purpose is legal as far as detaining irregular migrants is allowed under contemporary law and as far as EU has not imposed such project by any coercive means. The problem is that this project promotes the use of detention whereas the international organizations and bodies are calling to diminish its use. Those calls have clearly still not had an echo in any binding instruments. Detention still appears to most states as the only way to carry removal. The debate on the detention of irregular migrants is not whether or not they should be detained but still how they should.

Through this project EU wants to promote its best practices on detention but it possibly missed the opportunity to promote better practices. Encouraging Turkey to adopt alternatives of detention and to opt for a staff with social background and not security one would have been a great step forward.

When it comes to the responsibility of EU for the financing, it is limited by the fact that it is only giving funds for the construction of the facilities. It would have probably been much more challenging under international law if it had financed the running of the center in a long term perspective.

This thesis sought to show that the EU extraterritorial project is enshrined in deep normative and, hopefully, practice changes which make it relevant in the situation and not infringing any principle of international law. But it should be kept in mind that this type of extraterritorial project in domain which traditionally falls in the reserved domain of states is meant to promote domestic interests.

BOOKS and ARTICLES

Aleinikoff, Thomas Alexander, *International Legal Norms on Migration: substance without architecture*. In: *International migration law: developing paradigms and key challenges*. Edited by Ryszard Cholewinski, Richard Perruchoud and Euan MacDonald. The Hague, T.M.C.Asser Press 2007

Alvermann Donna E. and Dillon Deborah R.. *Response: Ways of Knowing Are Ways of Seeing: A Response to Roller*. The International and Comparative Law Quaterly Vol. 20, No 4, 1971 pp 776-768. Available at http://www.jstor.org/stable/757767

Bouiteillet-Paquet, Daphne. *Passing the Buck: a Critical Analysis of the Readmission Agreement Policy Implemented by the European Union and its Member States*. European Journal of Migration and Law 5, 2003 pp. 359-377

Brownlie, Ian. *Principles of Public International Law*. 7th edition. Oxford, Oxford University Press 2008

Cassese, Antonio. International Law. *2nd edition. Oxford, Oxford University Press 2005*

Chetail, Vincent. *Migration, Droits de l'Homme et Souveraineté: Le Droit International dans tous ses Etats.* In: *Mondialisation, Migration et Droits de l'Homme: Le Droit International en Question/ Globalisation, Migration and Human Rights: International Law Under Review, Volume II*. Vincent Chetail (dir.). Bruxelles, Bruylant 2007. pp. 13-133

Duffy, Helen. *International Human Rights Law.* In: *The "War on Terror" and the Framework of International Law.* Cambridge, Cambridge University Press 2005. pp. 273-379

Goodwin-Gill, Guy S.. *International Law and the Movement of Persons between States.* Oxford, Clarendon Press 1978

Joseph Sarah, Schultz Jenny and Castan Melissa. *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary.* 2nd edition.Oxford, Oxford University Press 2004

İcduygu Ahmet, *The Europeanization of National Policies and Practices of Immigration : 'EU-ization Matters: Changes in Immigration and Asylum Practices in Turkey'*. Edited by Thomas Faist and Andreas Ette . London, Palgrave MacMillan Publishers 2007. pp. 201-222

Kostakopoulou, Dora. *Irregular Migration and Migration Theory: Making State Authorization Less Relevant.* In: *Irregular Migration and Human Rights: Theoritical, European and International Perspectives.* Edited by Barbara Bogusz, Ryszard Cholewinski, Adam Cygan and Erika Szyszczak. Leiden, (Martin Nijhoff Publishers) 2004. pp. 41-47

Le Cour Grandmaison Olivier, Lhuilier Gilles, Valluy Jerome. *La banalisation du camp (1975-2006).* In: *Le retour des camps?: Sangatte, Lampedusa, Guantanamo.* Paris, Autrement 2007

Loucaides, Loukis G.. *Determining the Extra-territorial Effect of the European Convention: Facts, Jurisprudence and the Bankovic Case*. In: *The European Convention on Human Rights, Collected Essays.* Leiden, Martin Nijhoff Publishers 2008. pp. 73-94

Migreurop. *Appeler un camps un camps.* In: *Atlas des Migrants en Europe: Geographie Critique des Politiques Migratoires.* Clochard Olivier (dir.). Arman Colin, 2009 pp. 63-69

Nowak, Manfred. *U.N. Covenant on Civil and Political Rights, CCPR Commentary,* 2nd revised edition. Kehl, N.P. Engel 2005

Roig Annabelle and Huddleston Thomas. *EC Readmission Agreements: A Re-evaluation of the Political Impasse*. European Journal of Migration and Law 9, 2007 pp. 363-387

Semb, Anne Julie. *The normative foundation of the principle of non intervention*. Oslo, PRIO. 1992

Waller, Peter P.. *Aid and Political Conditionality: the Case of Germany with Particular reference to Kenya.* In: *Aid and Political Conditionality*. Edited by Olav Stokke. London Geneva, Frank Cass In association with the European Association Development Research and Training Institutes 1995.

INTERNATIONAL INSTRUMENTS

ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988

ICCPR, International Covenant on Civil and Political Rights, 1966

UNCAT, United Nations Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment, 1984

UN Convention on the Rights of all Migrant Workers and their Families, 1990

1951 Refugee Convention, Convention Related to the Status of Refugees, 1951

DECISIONS OF MONITORING BODIES

Judgement before the Court of Justice of the European Communities (ECJ), Luxembourg

Said Shamilovich Kadzoev v. Direktsia "Migratsia"pri Ministerstuo na vatreshnite raboti, Case C-357/09, 30 Novembre 2009

Judgements before The European Court of Human rights, Strasbourg

Abdolkhani and Karimnia v. Turkey, Application no 30471/08, 22 September 2009

Amuur v. France, Application No. 17/1995/523/609, 25 June 1996

Bankovic v. Belgium and others, Application No. 52207/99, 12 December 2001

Blume and others v. Spain, Application No. 37680/97, 14 January 2000

Chahal v. UK, Application No. 70/1995/576/662, 11 November 1996

Charahili v. Turkey, Application No. 46605/07, 13 April 2010

Cyprus v. Turkey, Application No. 25781/94, 10 May 2001

Dougoz v. Greece, Application No. 40907/98, 6 March 2001

Drozd and Janousek v. France and Spain, Application No. 12747/87, 26 June 1992

Engel and Others v. The Netherlands, Application No. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976

F v. UK, Application No. 17341/03, 22 June 2004

Guzzardi v. Italy, Application No. 7367/76, 6 November 1980

HL v. UK, Application No. 45508/99, 5 october 2004

Ilascu and others v. Moldova and Russia, Application No. 48787/99, 8 July 2004

Loizidou v. Turkey, Application No. 15318/89, 23 March 1995

Matthews v. UK, Application no 24833/94, 18 february 1999

Mayeka and Mitunga v. Belgium, Application No. 13178/03, 12 October 2006

Müslim v. Turkey, Application No. 53566/99, 29 April 2005 (only available in french)

NA v. UK, Application No. 25904/07, 17 July 2008

Raimondo v. Italy, Application No. 12954/87, 22 February 1994

Saadi v. Italy [GC] Application No. 37201/06, 8 February 2008,

Sultani v. France, Application No. 45223/05, 20 September 2007

T.I.V v. UK (dec.), Application No. 43833/98 2000-III

Z.N.S. v. Turkey, Application No. 21896/08, 19 January 2010

Saadi v. UK, Application No. 13229/03, 29 January 2008

Views and General Comments of the Human Rights Committee

A v. Australia, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993,30 April 1997

C. v. Australia, CCPR/C/76/D/900/1999, Communication No. 900/1999, 13 November 2002

Celepli v. Sweden, Communication No. 456/1991, U.N. Doc. CCPR/C/51/D/456/1991, 18 July 1994

Hammel v. Madagascar, Communication No.155/1983, U.N. Doc. CCPR/C/OP/2, 3 April 1987

Hugo van Alphen v. The Netherlands, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988, 15 August 1990

*Lopez Burgos v. Uruguay***,** Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40), 20 July 1981

Mansour Ahani v. Canada, Communication No. 1051/2002, U.N. Doc. CCPR/C/80/D/1051/2002, 15 June 2004

V.M.R.B v. Canada, Communication No.236/1987, U.N. Doc. CCPR/C/33/D/236/1987, 18 July 1988

CCPR General Comment No. 20*: Article 7, Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 March 1992

CCPR General Comment No. 09: *Article 10, Humane treatment of persons deprived of liberty*, 30 July 1982

CCPR General Comment No. 27: *Article 12, Freedom of Movement*, 2 November 1999

CCPR General Comment No. 31 [80]: *The nature of the general legal obligation imposed on States Parties to the Covenant* , 26 May 2004

EU INSTRUMENTS

Treaty on the Functioning of the European Union (TFEU), Entry into Force : 1 December 2009

Council Directive 2003/9/EC , 27 January 2003, for laying down Minimum Standards for the Reception of Asylum Seekers

Council Directive 2005/85/EC, 1 december 2005, on Minimum Standards on Procedures for Granting and Withdrawing Refugee Status

Council Directive 2008/115/EC, 16 Dcember 2008, on Minimum Standards and Procedures in Member States for Returning Illegaly Staying Third Country Nationals

Council Decision 2008/157/EC, 18 February 2008, on the Principles, Priorities and Conditions Contained in the Accession Partnership with the Republic of Turkey and Repealing Decision 2006/35/EC

Regulation (EC) No 1638/2006 of the European Parliament and the Council, laying down General Provisions Establishing a European Neighbourhood and Partnership Instrument, 24 October 2006

ELECTRONIC SOURCES

EU documents

Accession Partnerships of Turkey. http://ec.europa.eu/enlargement/candidate-countries/turkey/key_documents_en.htm [visited 14 August 2010]

Conclusions on Turkey: Extract from the Communication from the Commission to the Council and the European Parliament. *Enlargement Strategy and Main Challenges 2010-2011*. COM(2010) 660 final. November 2010 http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm [visited 12 November 2010]

CARDS Programme by Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia. http://europa.eu/legislation_summaries/enlargement/western_balkans/r18002_en.htm [visited 11 August 2010]

Cotonou Agreement, signed in 2000 amended in 2005by Council Decision 2005/599/EC. http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12101_en.htm [visited 10 August 2010]

EU-Georgia Agreement on the Facilitation of the Issuance of Visa. 11195/10 Presse 185. Brussels, June 2010 http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/737&format=HTML&aged=0&language=EN&guiLanguage=en [visited 5 september 2010]

European Commission, Staff Working Document. *Issues Arising From Turkey's Membership Perspective*. COM(2004) 656 final. Brussels, October 2004. http://ec.europa.eu/enlargement/press_corner/key-documents/index_en.htm [visited 14 August 2010]

Justice, Freedom and Security: Enlargement, Evaluation on Turkey. http://europa.eu/legislation_summaries/justice_freedom_security/enlargement/e22113_en.htm [visited 14 August 2010]

Presidency Conclusions 13463/02, para 36, Brussels 24 October 2002 available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/ec/72638.pdf [visited 10 September 2010]

Readmission Agreement EC-Pakistan: *Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorization.* October 2010 http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:287:SOM:EN:HTML [visited 2 November 2010]

Readmission Agreement EC-Pakistan, Procedure file. http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=NLE/2009/0036 [visited 2 November 2010]

Resolution 1707 (2010). *Detention of Asylum Seekers and Migrants in Europe*. Assembly debate on 28 January 2010 (7th Sitting). *Text adopted by the Assembly* on 28 January 2010 (7th Sitting). http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1707.htm [visited 20 August 2010]

Tampere, Presidency Conclusions of the European Council. "A Common EU and Asylum policy". http://www.europarl.europa.eu/summits/tam_en.htm [visited 12 August]

Turkey 2008 Progress Report. Commission staff working document. SEC 2008 2699 FINAL. Brussels, November 2008. http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2008_en.htm [visited 22 September 2010]

Turkey 2010 Progress Report. Commission staff working document. SEC(2010)1327. November 2010 http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm [visited 12 November 2010]

Others

Amnesty International. *Migration-related detention : a research guide on Human Rights standards relevant to the detention of migrants, asylum seekers and refugees* . November 2007 http://www.amnesty.org/en/library/info/POL33/005/2007 [visited 3 September 2010]

Amnesty International. *Irregular Migrants and asylum seekers: Alternatives to Immigration Detention*. March 2009 . http://www.amnesty.org/en/library/info/POL33/001/2009/en [visited 3 october 2010]

BBC News Europe. *EU and Libya reach deal on illegal migrants*. 6 October 2010. http://www.bbc.co.uk/news/world-europe-11484192 [visited 19 October 2010]

Bozkurt, Abduallah. *Hurdles remain on readmission agreements between Turkey and EU* . In: E-journal *Todays Zamman* . 31 May 2010 http://www.todayszaman.com/tz-web/news-211601-102-hurdles-remain-on-readmission-agreement-between-turkey-and-eu.html [visited 2 October 2010]

Circular on the Fight Against Illegal Migration, Ministy of Interior. (only available in Turkish) http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=4536 [visited 28 October 2010]

Evans Chris, Australian Senator, Former Minister for Immigration and Citizenship. Speech: « New directions in detention ». Australian National University, Canberra.

29 July 2008. http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm [visited 3 October 2010]

European Committee for the Prevention of Torture on Sweden: Preliminary Observations and Report of the visit to Sweden in June 2009. http://www.cpt.coe.int/en/states/swe.htm [visited 10 October 2010]

Eurostep. *No Agreement on Migration in Cotonou Agreement Revision.* http://www.eurostep.org/wcm/archive-eurostep-weekly/978-no-agreement-on-migration-in-cotonou-agreement-revision.html [visited 10 August 2010]

Helsinki Citizens Assembly. *Unwelcome guests: the detention of refugees in Turkey's foreigners Guesthouses*. November 2007. http://www.hyd.org.tr/?pid=610 [visited 13 September 2010]

Human Rights Watch. *Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees.* October 2006. http://www.hrw.org/backgrounder/eca/eu1006/ [visited 23 September 2010]

Human Rights Watch. *Stuck in a revolving door*. November 2008 http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-0 [visited 15 September 2010]

IGC, Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia. *Report on Readmission Agreements*. January 2002. http://www.docstoc.com/docs/44258100/IGC-report-on-Readmission-Agreements-Jan-2002 [visited 2 October 2010]

IOM. *Irregular Migration in Turkey*. Migration Research Series, No. 12. February 2003. at: http://www.unhcr.org/refworld/docid/415c6e904.html [visited 13 September 2010]

IPA decentralized National Progammes, Project number: TR 07 02 16, Twinning no: TR 07 IB JH 05, standard summary project file. In: "Project Fiches 2007". http://ec.europa.eu/enlargement/candidate-countries/turkey/financial-assistance/index_en.htm [visited 10 May 2010]

Jesuit Refugee Service-Europe. *Becoming Vulnerable in Detention*. Civil Society report, The Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (the DEVAS project). June 2010. http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=220&Itemid=242 [visited 11 October 2010]

Joint Standing Committee on Migration, Australia. *Criteria for release from detention*. December 2008. http://www.aph.gov.au/house/committee/mig/detention/report.htm [visited 3 October]

Kaya, Ibrahim. *Undocumented migration, Counting the uncountable*: *Country Report – Turkey*. Country report CLANDESTINO project. December 2007. http://clandestino.eliamep.gr/non-eu-transit-country-reports/#more-1064 [visited 30 August 2010]

Martin, Susan. *The Legal and Normative Framework of International Migration*. Global Commission on International Migration. September 2005. http://www.gcim.org/en/ir_experts.html [visited 11 October]

Norwegian Helsinki Committee, NOAS and AITIMA. *Out the Back Door: The Dublin II Regulation and illegal deportations from Greece*. October 2009. http://www.nhc.no/php/index.php?module=article&view=883 [visited 28 September 2010]

Recommendations Prague Ministerial: Conference of Ministers on the Prevention of Illegal Migration held in the context of the Budapest process. October 1997. http://www.icmpd.org/789.html?&tx_icmpd_pi2[document]=434&cHash=90aa64d1f162183f9918c4d9fc554d53 [visited 11 October 2010]

UNHCR. *Alternatives to Detention of Asylum Seekers and Refugees*. POLAS/2006/03. April 2006. http://www.unhcr.org/refworld/docid/4472e8b84.html [visited 5 October 2010]

UNHCR . *Detention of Refugees and Asylum-Seekers*. No. 44 (XXXVII) – 1986. 13 October 1986. http://www.unhcr.org/refworld/docid/3ae68c43c0.html [visited 20 August]

UNHCR. *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*. 26 February 1999. http://www.unhcr.org/refworld/docid/3c2b3f844.html [visited 20 August]

UNHCR. *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions.* March 2010. http://www.unhcr.org/refworld/docid/4c63e52d2.html [visited 17 October 2010]

Verhaeghe, Peter. Europa Caritas. *Coherence between Migration and Development Policies.* http://www.socialwatch.eu/wcm/coherence.html [visited 17 August 2010]

Working Group on Arbitrary Detention Report, Commission on Human Rights 55th Session. E/CN.4/1999/63. February 1998. http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1520 [visited 2 September 2010]

Working Group on Arbitrary Detention, Human Rights Council 4th session. *Mission to Turkey*. A/HRC/4/40/Add.5. February 2007. http://www2.ohchr.org/english/issues/detention/visits.htm [visited 2 September 2010]

Working Group on Arbitrary Detention, Human Rights Council 13th session. A/HRC/13/30. Januray 2010. http://www2.ohchr.org/english/bodies/hrcouncil/13session/reports.htm [visited 2 September 2010]

WEBSITES

Republic of Turkey Ministry of Foreign Affairs. http://www.mfa.gov.tr/turkey-_s-fight-against-illegal-migration.en.mfa [visited 20 October 2010]

Global Detention Project website, Profile of Turkey. http://www.globaldetentionproject.org/countries/europe/turkey/introduction.html [visited 5 May 2010]

FRONTEX, see External Relations. http://www.frontex.europa.eu/external_relations/ [visited 23 September 2010]